

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GERALD VON TOBEL,

Plaintiff,

v.

RAYMOND et al.,

Defendants.

Case No. 3:16-cv-00168-RCJ-VPC

ORDER

**I. DISCUSSION**

Plaintiff, a *pro se* prisoner, previously filed an application to proceed *in forma pauperis* and a first amended complaint. (ECF No. 1, 3). The Court screened the first amended complaint and granted Plaintiff leave to amend. (ECF No. 5 at 10). The screening order stated that, if Plaintiff chose not to file a second amended complaint, the case would proceed on Plaintiff's First Amendment retaliation claim (Count IV) against defendant correctional officer Darnell. (*Id.* at 11).

Plaintiff now files a motion to withdraw civil rights complaint § 1983 without prejudice. (ECF No. 10). In the motion, Plaintiff acknowledges that the screening order had stated that Plaintiff could proceed on one claim if he chose not to file an amended complaint. (*Id.* at 2). Plaintiff states that he seeks to withdraw his § 1983 complaint and to dismiss without prejudice. (*Id.*) The Court interprets this motion as a motion for voluntary dismissal.

Pursuant to Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an

1 action without a court order by filing “a notice of dismissal before the opposing party  
2 serves either an answer or a motion for summary judgment.” Fed. R. Civ. P.  
3 41(a)(1)(A)(i). The Court grants Plaintiff’s motion to voluntarily dismiss this action  
4 because no responsive pleading has been filed in this case. As such, the Court dismisses  
5 this action without prejudice.

6 **II. CONCLUSION**

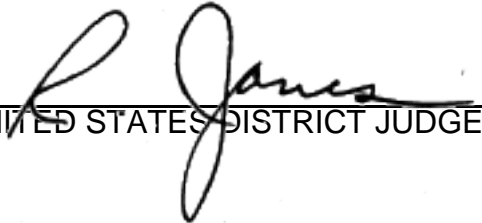
7 For the foregoing reasons, it is ordered that the motion to withdraw civil rights  
8 complaint § 1983 without prejudice (ECF No. 10) is construed as a motion for voluntary  
9 dismissal.

10 It is further ordered that the motion for voluntary dismissal (ECF No. 10) is granted.

11 It is further ordered that this action is dismissed in its entirety without prejudice.

12 It is further ordered that the Clerk of the Court shall enter judgment accordingly.

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14 DATED THIS 6<sup>th</sup> day of December, 2016.

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17 UNITED STATES DISTRICT JUDGE  
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